IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

WA.No. 676 of 2007()

AGAINST THE JUDGEMENT IN OP.191/2002 Dated 20/11/2006
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APPELLANT: PETITIONER IN THE O.P

G.SOMARAJAN, ELANJIKKAL VEEDU,
MULLUVILA, VADAKKEVILA VILLAGE, KOLLAM.

BY ADV. SRI.P.A.NOOR MUHAMMED

RESPONDENTS: RESPONDENTS IN THE O.P
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1. THE DEPUTY TAHSILDAR(R.R), KOLLAM.

2. THE INSPECTOR,
KERALA TODDY WORKERS WELFARE FUND,
KOLLAM.

3. B.VIJAYAN, SHINU BHAVANAM,
NENMENI, MUNROTHURUTHU, KOLLAM.

4. V.USHA, -DO-

5. P.CHITHARANJAN,
KARTHIYAYANI MANDIRAM,
PEZHUMTHURUTHU, MUNROTHURUTHU, KOLLAM.

6. N.REMANI, VADAKKEKKUNNATHUVILA VEEDU,
ULIYAKKOVIL,KOLLAM.

7. V.G.UNNIKRISHNAN, VALIYAPARAMBIL HOUSE,
VALAPPAD P.O., THRISSUR.

8. T.S.LATHIKA, PUSHPAMANDIRAM,
MUNDAKKAL, KOLLAM.

BY ADV. SRI.V.N.ACHUTHAKURUP(SR)
GOVERNMENT PLEADER
SRI.RENIL ANTO, SC, KTWWF BOARD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

W.A.No.676 of 2007

Dated, this the 31st day of May, 2007

JUDGMENT

H.L.Dattu,C.J.

Petitioner in O.P.No.191/2002 is the appellant in this appeal. The challenge in this appeal is against the orders passed by the learned Single Judge in the aforesaid writ petition. The learned Judge after holding that the petitioner is the person responsible for payment of the dues under the Toddy Workers' Welfare Fund Act (the Act, for short), has still relegated the petitioner to file an appropriate appeal, if he so desires. Further, the learned Single Judge has imposed a condition that the appeal shall be filed by the petitioner only after depositing 50% of the amounts due under the revenue recovery notice.

2. Learned counsel for the appellant would submit that, if for any reason, the learned Single Judge was of the opinion that petitioner if aggrieved by the action of the respondents, he has to file an appropriate appeal, he should not have indicated that the petitioner is the person responsible for payment of the workers' dues under the Act and further should not have imposed any condition for preferring an appeal.

3. Having gone through the orders passed by the learned Single Judge, we are of the opinion that there is some merit in the contention canvassed by the learned counsel for the petitioner.

4. What was questioned by the petitioner in the writ petition is only a revenue recovery notice. The learned Single Judge is of the opinion that the petitioner alone is

responsible for payment of the dues to the workmen under the provisions of the Act. Having said so, the learned Judge should not have allowed the petitioner to prefer an appeal, if he so desires, against the provisional assessment orders passed and the revenue recovery notice issued thereunder.

5. Section 8 of the Act provides for determination of the amounts due from the employer. Sub-section (5) of section 8 of the Act authorises a person aggrieved by an order passed under sub-section (1) of section 8 of the Act to prefer an appeal before the State Government or any other authorities as specified by the State Government within 60 days from the date of receipt of the order under sub-section (1) of section 8 of the Act. For filing of an appeal, no condition is prescribed under the Act.

6. In the instant case, firstly the learned Single Judge has held that the petitioner is the person responsible for payment of the workers' dues under the Act. Having said so, the learned Judge should not have relegated the petitioner to approach the appellate authority for the reason that the appellate authority, while deciding the appeal, is bound by the observations made by this court. Therefore, the purpose of filing an appeal itself will not be of no use to the appellant/petitioner. In that view of the matter, the above observation made by the learned Single Judge requires to be expunged from the judgment.

7. While relegating the petitioner to file an appeal as provided under sub-section (5) of section 8 of the Act, in our opinion, the learned Judge should not have directed the appellant to deposit 50% of the amount demanded under the revenue recovery notice for the reason that sub-section (5) of section 8 of the Act does not provide for imposition of such a condition. In that view of the matter, even the direction issued by the learned Single Judge requires to be deleted by us from the judgment.

8. In view of the above, without going into the other details of the case, the appeal is allowed. The orders passed by the learned Single Judge is set aside and the appellant is permitted to file an appeal, if he so desires, against the orders passed by the Appellate Authority under the Toddy Workers' Welfare Fund Act in exercise of his powers under sub-section (1) of section 8 of the Act, within 60 days from today. If such an appeal is filed within the aforesaid time, the Appellate Authority shall decide the appeal without reference to the period of limitation. Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

mt/DK-